RAPANOS

Mobile District
Regulatory Division

SUPREME COURT

Supreme Court decisions, along with statutes and regulations, make up the law that the Corps and the public must follow.

RAPANOS & CARABELL

- Carabell v. United States
- Rapanos v. United States

Two cases combined and referred to simply as “RAPANOS”

RAPANOS

In Rapanos, the Supreme Court addressed where the Federal government can apply the Clean Water Act in determining whether a wetland or tributary is a "water of the United States."

Background

The Rapanos Decision

- Five separate opinions with no single opinion commanding the majority.

- Scalia rejected the idea that waters of the U.S. are limited to only TNW & abutting wetlands.

- Plurality (4 justices) stated that agencies should only regulate RPW & wetlands with a surface connection to RPW.

- Kennedy agreed with the plurality that the statutory definition of waters of the U.S. extends beyond TNW, but found the plurality's interpretation of scope of CWA to be inconsistent with the Act's purpose.

- Kennedy – wetlands are waters of the U.S. if they could

NO MAJORITY

- **Now What?**
- **Legal principles may be derived from those principles espoused by five (5) or more justices.**

GUIDANCE

Based on the Supreme Court decision, the agencies developed guidance to address which waters are subject to Clean Water Act (CWA) jurisdiction at Section 404.

GUIDANCE WHERE?

http://www.usace.army.mil/cw/cecwo/reg/cwa_guide/cwa_guide.htm

GUIDANCE

The agencies will be conducting a more thorough and robust analysis when we are determining whether a particular water body is subject to Clean Water Act (CWA) section 404 jurisdiction.

GUIDANCE

- **First six months implementing the guidance, the agencies invite public comments on case studies and experiences applying the guidance.**
- **The agencies, within nine months from the date of issuance, will reissue, revise, or suspend the guidance after carefully considering the public comments received and field experiences with implementing the guidance.**

YOUR COMMENTS

Comments can be submitted to docket EPA-HQ-OW-2007-0282 through www.regulations.gov.